

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF THE CHAIRMAN

March 11, 2003

Mr. Scott Gudes
Deputy Under Secretary for Oceans
and Atmosphere
United States Department of Commerce
Washington, D.C. 20230

Dear Mr. Gudes:

On January 31, 2003, you requested the comments of the Federal Energy Regulatory Commission (Commission) on an administrative appeal brought by Islander East Pipeline Company (Islander East) pursuant to the Coastal Zone Management Act (CZMA). Islander East requests that the Secretary of Commerce override the Connecticut Department of Environmental Protection's objection to a consistency certification for Islander East's proposed natural gas pipeline (the Islander East Project), which the Commission has approved to deliver natural gas from Connecticut to the eastern Long Island, New York area. In view of the serious need for new infrastructure to deliver energy to Long Island and our Commission's exhaustive review of the environmental impact of this project and the other available alternatives, I am writing this letter to urge you to find that the Islander East Project may be approved as consistent with the CZMA.

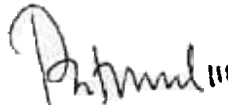
The Commission issued orders approving construction and operation of the Islander East Project on December 21, 2001, September 19, 2002, and January 17, 2003. Prior to approving the Islander East Project, the Commission conducted an extensive review of the project as required by the Natural Gas Act (NGA) and other statutes. This review determined, among other things, the need for the project. Based on its review, the Commission concluded that the project is required to meet the growing demand for natural gas in the region. The Commission's analysis also included an exhaustive study of the project's environmental impacts as required by the National Environmental Policy Act (NEPA) and other environmental statutes; this analysis focused in particular on the impact the project will have on Long Island Sound, the matter which is the subject of the Commission's analysis. This analysis, which was subject to review and comment by the Commission and federal agencies, the public and other entities, concluded that the Commission had found acceptable environmental impacts, including the crossing in Long Island Sound of a natural gas pipeline.

Having conducted a wide-ranging analysis of the need for this project and its environmental impacts and concluded that the project is required in the public interest, I now am concerned that attempts to develop the nation's energy infrastructure and to increase the reliability and security of the supply of natural gas to Long Island will be thwarted by a local review that focuses solely on a single aspect of the project, albeit an important aspect. This is particularly true where the environmental impacts associated with the water crossing have been fully and carefully reviewed by the Commission in a public process and have been found to be acceptable. While we are mindful that the development and construction of pipeline facilities present significant environmental challenges, the Commission must balance these considerations with its overriding responsibility under the NGA to ensure the timely development of an adequate, reliable energy infrastructure.

The project will contribute to Long Island's energy security, a particularly vital national consideration at the present time. The Islander East Project will also increase the diversity of available pipeline transportation options and access to supply sources and introduce pipeline-to-pipeline competition into eastern Long Island for the first time. Moreover, the pipeline will increase overall regional infrastructure reliability and offer an additional source of outage protection to an area which is currently served mainly by one source of supply. Currently, most of eastern Long Island's residential and small commercial natural gas customers rely on a single pipeline as a source of their supply. Any disruption on that pipeline could require one of Long Island's larger natural gas distribution companies to curtail service to approximately 124,000 customers. That number does not include the disruption to many electric customers that rely on gas-fired electric generation facilities.

I appreciate the opportunity to comment. Enclosed are copies of the Commission's December 21, 2001, September 19, 2002, and January 17, 2003 certificate orders, and the comments of the Commission staff on Islander East's appeal. Please let me know if I can be of any further service.

Best regards,



Pat Wood, III
Chairman

Enclosures

✓ cc: Brandon Blum w/encls

COMMENTS
OF THE FEDERAL ENERGY REGULATORY COMMISSION STAFF
ON ISLANDER EAST'S CZMA APPEAL
TO THE SECRETARY OF COMMERCE

In a letter dated January 31, 2003, the Department of Commerce requested the comments of the Federal Energy Regulatory Commission (Commission) on an administrative appeal to the Secretary of Commerce brought by Islander East Pipeline Company (Islander East) pursuant to the Coastal Zone Management Act (CZMA). Islander East requests that the Secretary override the Connecticut Department of Environmental Protection's (Connecticut DEP) objection to a consistency certification for Islander East's proposed natural gas pipeline (the Islander East Project). The comments of the Commission staff are set forth below.

On June 15, 2001, Islander East filed an application with the Commission under section 7(c) of the Natural Gas Act (NGA) for certificates of public convenience and necessity authorizing it to, among other things, construct and operate an interstate natural gas pipeline from Connecticut to a terminus in Long Island, New York. Thereafter, the Commission conducted a comprehensive review of the project, including a review of the need for the project as required by the NGA, and an environmental review of the project as required by the National Environmental Policy Act (NEPA) and other statutes.

In providing these comments, the Commission staff is cognizant of the statutory schemes Congress implemented in adopting the NGA and the Coastal Zone Management Act. The CZMA is designed to encourage and assist the individual states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone. Pursuant to that charter, a state is charged with making such decisions, subject to review by the Secretary to ensure that the state's determination is consistent with the objectives or purposes of the CZMA, or is necessary in the interest of national security.

In the NGA, Congress delegated licensing authority for interstate natural gas pipelines solely to the Commission. It did so to ensure that the national interest in developing a national energy infrastructure would be paramount over local concerns that might otherwise thwart the construction and operation of such projects.

In this particular case, the Commission has been fully aware of, and has independently evaluated, the environmental concerns raised by the crossing of Long Island Sound. The Commission's certificate orders acknowledged that there will be transient environmental impacts associated with the crossing and the Commission has

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taken all reasonable steps to reduce those impacts. While the final Environmental Impact Statement for the project determined that there was an environmentally preferable alternative, the Commission determined that the environmentally preferable alternative would neither meet the Commission's NGA policy goals of increasing the flexibility and reliability of the interstate pipeline grid nor promote competition.

Although we understand the concerns raised by the Connecticut DEP, we nonetheless believe that the Islander East Project is consistent with the objectives and purposes of the CZMA and recommend that the Secretary find that the Commission may approve the project for construction and operation. In doing so, we urge the Secretary to consider the statutory scheme that gives the Commission sole responsibility to determine whether and under what conditions a proposed interstate pipeline is required by the public convenience and necessity and to give due weight to the findings that the Commission has made in determining that this particular project is in the public interest.

As a result of its review of the record in this case, the Commission issued orders on December 21, 2001, September 19, 2002, and January 17, 2003 approving the construction and operation of the Islander East Project (copies of the Commission's orders and the final Environmental Impact Statement are attached for your information). The Commission's approval is subject to, among other things, Islander East's obtaining a consistency determination as required by the CZMA. As to the issue of need for Islander East, the Commission concluded that the benefits of Islander East's proposed project are clear and significant. The Commission noted that Islander East has entered into firm, long-term, binding precedent agreements with customers for all of the pipeline's 285,000 Dekatherms per day of capacity. It also noted that the proposed facility is ideally located to facilitate the development of needed generation projects on Long Island.

In reaching the conclusion that the Islander East Project is needed, the Commission found that the project will diversify the gas portfolio delivered to Long Island. It found that the addition of the new pipeline, with access to multiple supply areas, will expand shippers' options by introducing pipeline-to-pipeline competition to Long Island markets for the first time. Most importantly, it found that the project will provide reliability to the region's infrastructure. The eastern Long Island market area is primarily served by the existing Iroquois Gas Transmission System, L.P. (Iroquois) mainline facility that crosses Long Island Sound. Any disruption in service on Iroquois' facility would have a major impact on the ability of local distribution companies to continue certain natural gas and electric service on Long Island. Accordingly, the Commission concluded that Islander East's proposal was in the public convenience and necessity and issued the certificates necessary to construct and operate the project.

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Prior to issuing certificates for the Islander East Project, the Commission also carefully considered the environmental impacts of the proposed project. Among other things, the Commission staff prepared a draft and a final Environmental Impact Statement, all of which were subject to comment by state, local and federal agencies, the public, and other entities. The Commission staff also consulted with numerous state, local and federal agencies with regard to the potential environmental impacts of the project, including the issues of concern to the Connecticut DEP in its objection to the consistency certification for the proposed project.

As a result of its review, the Commission concluded that construction and operation of Islander East's pipeline would result in impacts along the route that would be locally significant, most notably during the construction period. It noted that, although these impacts may be mitigated extensively through mitigation measures required by the Commission, many would be unavoidable. By balancing the many interests the Commission is required by statute to consider, including specifically the impacts to Connecticut's coastal zone at issue here, the Commission concluded that the Islander East Project is in the public convenience and necessity and authorized the construction and operation of the project subject to its compliance with various conditions designed to, among other things, protect the environment.

On October 15, 2002, the Connecticut DEP objected to the consistency certification for the Islander East Project. Its primary concerns are that the proposed Islander East Project will: (1) adversely impact the water quality; (2) permanently damage the shellfish beds in a way that cannot be mitigated; (3) permanently replace a water dependent use with a non-water dependent use; and (4) permanently degrade tidal wetlands. It argues that the pipeline is not a national interest facility because of these impacts on the environment and that there is an alternative that will minimize those impacts. Upon consideration of Connecticut DEP's October 15, 2002 objection, the Commission staff recommends that the Secretary find that Islander East may be federally approved because it is consistent with the objectives or purposes of the CZMA.

In support thereof, we note that the Islander East Project substantially furthers the public interest. Perhaps most significantly, it will ensure the reliability of eastern Long Island's supply of natural gas for residential and commercial heating and electric generation by providing a second supply source in the event of a disruption on the only pipeline currently serving the needs of most eastern Long Island consumers.

Further, the Islander East Project will help ensure that the basic energy needs of the heavily populated eastern Long Island area are met. The Islander East Project is capable of supplying enough natural gas to heat approximately 600,000 homes. The natural gas will primarily come from Canada, a close political and economic ally of the

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United States, and will reduce reliance on overseas supplies. Moreover, while no fossil fuel (or any other fuel for that matter) is completely benign in terms of its environmental effects, natural gas makes far less of a contribution to global warming than, for example, other fossil fuels, such as coal or fuel oil, that are likely to be used in its place. These values are consistent with those the CZMA seeks to foster as set forth in Sections 302 and 303 of the Act.

It can be expected that the Islander East Project will deliver supplies of natural gas into the heavily populated Long Island, New York area for a very long time, perhaps the next fifty to one hundred years. This contribution to the national interest is incalculable in terms of economic benefit achieved and environmental consequences avoided over that time-frame. The impacts of the project on Connecticut's coastal zone, on the other hand, will be primarily transient and limited to the time during which construction would occur, typically a period of days or weeks. Moreover, any potential impacts, including impact to the oyster habitat, can be mitigated using widely accepted procedures, including those currently in use by the National Oceanic and Atmospheric Administration.¹

Finally, there is no reasonable alternative available which would permit the Islander East Project to be constructed consistent with the enforceable policies of Connecticut's Coastal Management Plan that will fulfill the Commission's statutory mandates under the NGA. In terms of the crossing itself, no one has identified, and the Commission is not aware of, any feasible technology or approach that would allow the pipeline crossing to be constructed in a significantly less intrusive way. The Connecticut DEP has suggested that an alternative pipeline using Iroquois' existing facilities that cross Long Island Sound will provide a similar level of gas availability to Long Island. As noted above, while use of the existing pipeline may provide the same availability of gas, use of the existing Iroquois pipeline will not provide the reliability and security that a second, independent crossing can provide. As stated, any disruption in service on Iroquois' facility would have a major impact on the ability of the local distribution companies to continue certain natural gas and electric service on Long Island.

For these reasons, we recommend that the Secretary find that the Islander East Project may be federally approved as consistent with the objectives or purposes of the CZMA.

¹<http://csc.noaa.gov/acebasin/specgal/oyster.htm> See also NOAA's Hudson Raritan Estuary Oyster Bed Restoration Project web page at <http://www.nmfs.noaa.gov/habitat/restoration/community/projects/hudsonraritanestuaryoyster.htm>.